IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 1164 of 2001()

CC.385/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR DT.13.4.2000.
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APPELLANT: COMPLAINANT

YESUDAS SUNDAR, NO.3 BAZAR,
ONDEN ROAD, KANNUR 3.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS: STATE & ACCUSED
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1. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR ,
   HIGH COURT OF KERALA.

2. **P.C.SAJEEVAN, S/O.BALAKRISHNAN,**
   RESIDING AT KRISHNANJALI,
   PAYYAMBALAM, KANNUR.

BY ADV. SRI.A.MOHAMED MUSTAQUE
PUBLIC PROSECUTOR SRI.AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13 /07/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 1164 OF 2001

DATED THIS THE 13th June 2007

JUDGMENT

The appellant is the complainant in C.C.No,.385/1996 in the file of the Judicial First Class Magistrate-I, Kannur with respect to the offence under Section 138 of the Negotiable Instruments Act. The trial court acquitted the accused which order is called in question herein.

2. The case of the complainant is that the accused borrowed a sum of Rs.1,50,000/- and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The case set up by the defence is that the accused had borrowed a sum of Rs.5,000/- from one Ashique Balakrishnan and that he had repaid the amount but the cheque was not returned and the above cheque has been misused by the complainant.

3. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P6 and DW.1 and Exts.D1 & D2.

4. The evidence of DW1, the Bank Manager is that the account of the accused was closed on 13-7-1994 itself. The date of the impugned cheque is 27-3-1996. DW1 has produced Ext.D1 copy of the register for issuance of cheque book including the impugned cheque leaf dated 28-4-1994. Further it was noted that PW1 was

questioned with respect to his source and it is brought out that he is a driver with the monthly earning of Rs.4500/-. According to him, the amount was obtained on the dissolution of a partnership firm in which he was a partner. He was engaged in the business of renting out table, chair etc. That was in 1980-81 and the same was dissolved in January 1994. It was known by name "Sangeeth goods" and the partner was one Girish Babu. It is noted that the complainant has not produced any objective evidence to establish the above particulars. Further he had mentioned wrongly the date of lending the amount. The date mentioned in the sworn statement is 25-2-1996, in his chief examination as March 1995 and in the cross examination of 25-3-1994 and even the name of the accused was at first wrongly mentioned, although the same was corrected immediately. In Section 313 questioning the version of the accused is that the above Ashique Balakrishnan from whom he borrowed the amount and Girish Babu, Partner of the complainant are close friends and that was how the cheque happened to be obtained by the complainant.

In the circumstances, I find that the amount involved being a substantial in the year 1995, the suspicion as to the source has got relevance. Further the cheque is dated about two years subsequent to

the date of closing of the account. Further, the dates of lending was wrongly mentioned repeatedly. It was in the above circumstances that the court below has found that the complainant could not establish beyond reasonable doubt. In the circumstances, I find that the complainant has failed to establish sufficient reason to interfere in the orders of the court below. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. 1164 of 2001
JUDGMENT

13-7-2007